

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

McNEIL NUTRITIONALS, LLC and  
JOHNSON & JOHNSON HEMISFERICA S.A.,

Plaintiffs,

VS.

MERISANT COMPANY and MERISANT  
PUERTO RICO, INC.,

Defendants.

Civil Action No. 04-1090 (JAG)

## FINAL CONSENT JUDGMENT

IT IS HEREBY ADJUDGED, ORDERED and DECREED, pursuant to the agreement and consent of the parties, as follows:

1. The Court has jurisdiction over the parties and subject matter of this action.
2. Defendants Merisant Company and Merisant Puerto Rico, Inc. and their agents, servants, employees and attorneys, and those persons in active concert and participation with them, who receive actual notice of this Permanent Injunction by personal service or otherwise (collectively "Merisant"), be and hereby are permanently enjoined and restrained, throughout the United States, its territories and possessions, from manufacturing, distributing, importing, advertising, marketing or selling a no-calorie sweetener in any packaging, including without limitation the packaging depicted in Exhibit C to the Amended Complaint, that is confusingly similar to the Splenda® Trade Dress (as set forth in the Court's July 29, 2004 Memorandum, Findings of Fact and Conclusions of Law and in the Court's November 16, 2004

Order), an example of which is depicted in Exhibit A to the original Complaint.

3. The bond posted by substituted plaintiff McNeil-PPC, Inc. and plaintiff Johnson & Johnson Hemisferica S.A. in the amount of \$350,000.00 is hereby discharged.

4. Without this Judgment being any determination that the Transitional Package (depicted as Exhibit E to the Amended Complaint) infringes the Splenda Trade Dress, Merisant has agreed to and shall cease distribution and shipment of Same® products in that Transitional Package on or before June 22, 2005.

5. Without this Judgment being any determination that the Same individual-serving packets contained in and depicted on the Transitional Package (also depicted in paragraph 31 of the Amended Complaint) infringe the Splenda Trade Dress, Merisant has also agreed to and shall cease distribution and shipment of those packets on or before June 22, 2005.

6. Merisant shall direct its distributors and use all methods available to it (including those set out in the parties' Settlement Agreement) to cause its distributors to cease distribution and shipment of both the Transitional Package (depicted as Exhibit E to the Amended Complaint) and the particular Same individual-serving packets depicted on the Transitional Package (also depicted in paragraph 31 of the Amended Complaint), on or before July 13, 2005.

7. The revised packaging depicted in paragraph 28 of Merisant's Answer to the Amended Complaint shall be deemed to not infringe the Splenda Trade Dress.

8. Except as set forth in this Final Consent Judgment, all claims of violations of the Lanham Act or of the law on the Commonwealth of Puerto Rico set out in the Amended Complaint are dismissed with prejudice. All claims for damages and attorneys' fees are likewise dismissed with prejudice. Each party shall bear its own costs.

9. The Court shall retain jurisdiction over the parties for the purposes of enforcing this Final Consent Judgment.

CONSENTED TO:

**Plaintiffs McNeil Nutritionals, LLC and  
Johnson & Johnson Hemisphérica S.A.**

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**Defendants Merisant Company  
and Merisant Puerto Rico, Inc.**

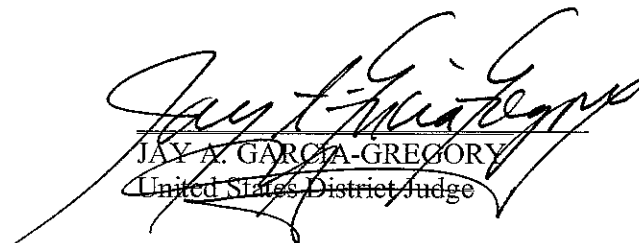
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IT IS SO ORDERED.

In San Juan, Puerto Rico, this 31<sup>st</sup> day of May, 2005.

  
JAY A. GARCIA-GREGORY  
United States District Judge